

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JASON MCLAUGHLIN §
VS. § CIVIL ACTION NO. 9:19-CV-22
KEVIN JACKSON, ET AL. §

**ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Jason McLaughlin, a federal prisoner, proceeding *pro se*, filed this civil rights action against Kevin Jackson, Al Charanza, Lisa Flournoy, La Salle Corrections, Maintenance and Training Corporation, Ron Inselman, and unidentified defendants.

The Court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the action without prejudice pursuant to 28 U.S.C. § 1915(e).

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See FED. R. CIV. P. 72(b)*. After careful consideration, the Court concludes the objections are without merit. To the extent that plaintiff seeks compensation for alleged violations of his constitutional rights, he is barred from seeking such relief until his conviction has been overturned or declared invalid. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). To the extent that

plaintiff challenges the fact or duration of his confinement, such claims are only cognizable by collaterally attacking the judgment or sentence. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (noting that a petition for writ of habeas corpus is the appropriate means for a prisoner to challenge the fact or duration of his confinement). Therefore, the Magistrate Judge correctly concluded that plaintiff failed to state a claim upon which relief may be granted. Because plaintiff paid the filing fee after the Magistrate Judge issued the Report and Recommendation, dismissal is appropriate under 28 U.S.C. § 1915A, rather than 28 U.S.C. § 1915(e).

Plaintiff requests the Court to stay this case until the conclusion of his post-conviction review due to potential issues with the statute of limitations. However, it is not necessary to stay this case because the statute of limitations does not begin to run until the criminal proceedings are resolved in plaintiff's favor. *Heck*, 512 U.S. at 489.

ORDER

Accordingly, plaintiff's objections (document no. 12) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 8) is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So ORDERED and SIGNED March 20, 2019.



Ron Clark, Senior District Judge